IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 829

NORTH AMERICAN AIRLINES, INC., ET AL.,
PETITIONERS

v.

CIVIL AERONAUTICS BOARD

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR THE CIVIL AERONAUTICS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit (Pet. App. A) is not yet reported. The findings and order of the Civil Aeronautics Board (R. 1259, 1445, 1499) are not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on December 20, 1956, and a petition for rehearing was denied on January 18, 1957. The petition for a writ of certiorari was filed on March 11,

1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

The Civil Aeronautics Board found that, in violation of Section 401 of the Civil Aeronautics Act, a group comprised of irregular air carriers and persons controlling such carriers had combined such carriers and various "service" companies and thereby had provided regularly scheduled air service as a single entity under the name "North American Airlines," without a certificate of public convenience and necessity; and that, without Board approval and in violation of Section 408 of the Act, the properties of the irregular air carriers had been unlawfully consolidated with those of the individuals into a single carrier, and the individuals unlawfully had acquired control of the irregular carriers. The Board revoked the operating authority of the irregular carriers, on the finding that any lesser sanction would be inadequate to insure compliance with the law. The following questions are presented:

(1) Whether there is substantial evidence to support the Board's finding that "North American Airlines" is a single air carrier which conducted regularly scheduled operations without certificate authority, in violation of Section 401 of the Act.

(2) Whether the Board abused its discretion in concluding that the public interest required revocation rather than some lesser sanction.

(3) Whether Section 408(a)(1) of the Act, which makes it unlawful without Board approval to "consolidate" properties utilized in air transportation "into one person for the ownership, management, or operation" thereof, prohibits a combination of properties into a single unincorporated enterprise.

(4) Whether persons engaged in leasing aircraft, selling airline tickets and promoting air transportation, are engaged in a "phase of aeronautics" under Section 408 of the Act.

(5) Whether the Board erred in denying, as untimely, a motion to disqualify one of its members, which was filed on the day on which the Board's decision was announced and was based upon matters known to petitioners long prior to filing.

STATUTES AND REGULATIONS INVOLVED

Pertinent provisions of the Civil Aeronautics Act are set forth in the Appendix, *infra*, pp. 20-22. Pertinent regulations of the Civil Aeronautics Board are set forth in Appendix C to the petition (pp. 23A to 34A).

STATEMENT

The petitioners are four individuals (Weiss, Fischgrund, Lewin and Hart), and the following business organizations found by the Board to be managed and controlled by them: four "Large Irregular Air Carriers" (North American Airlines, Trans National Airlines, Trans American Airways, and Hemisphere Air Transport), an airline ticket agency (North American Air Coach System), and four partnerships

composed principally of the individual petitioners (Republic Air Coach System, Twentieth Century Aircraft Company, California Aircraft Company and Standard Airmotive Company). Collectively, the petitioners comprise "North American Airlines" or the "North American Combine" (presently doing business as "Trans American Airlines").[1] Under purported authority of the operating permits of the Large Irregular Air Carriers, "North American Airlines" has been conducting regularly scheduled airline services between New York City and West Coast points, and between New York City and Miami.

A "Large Irregular Carrier" is one authorized to conduct air transportation with large transport-type aircraft on an infrequent and irregular basis between the same cities. Such carriers do not hold certificates of public convenience and necessity, but operate under "Letters of Registration" issued by the Board pursuant to an exemption regulation promulgated under Section 416 of the Civil Aeronautics Act (49 U.S.C. 496). The 1947 regulation, under which petitioners' letters of registration were issued (Pet. 23A),[2] defined

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[1] See *American Airlines* v. *North American*, 351 U.S. 79; *American Airlines* v. *North American Airlines, Inc., et al.*, certiorari granted, 352 U.S. 988.

[2] The four carrier petitioners are authorized, on an individual basis, to conduct irregular cargo and passenger operations between any points within the United States or within United States Territory except Alaska, and between any point in the United States and any point in United States Territory including Alaska. Cargo operations are permitted between any points in the world, except between points within Alaska (see Pet. 23A, and 14 CFR 291).

an irregular air carrier as one which "does not hold out to the public, expressly or by a course of conduct, that it operates one or more aircraft between designated points * * * regularly or with a reasonable degree of regularity" (*id.*). It further provides that letters of registration may be revoked "for knowing and willful violation" of any provision of the Civil Aeronautics Act or requirement thereunder (Pet. 29A).[3]

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[3] This regulation was revised in 1949 (14 CFR 291), the major change being that the blanket exemption theretofore granted was terminated. However, each carrier was permitted to continue to operate as before, pending Board determination of whether the irregular carriers as a class should be permitted to continue and, if so, to what extent, under what form of operating authority, and which particular carriers. This matter is pending before the Board in *Large Irregular Air Carrier Investigation* (C.A.B. Docket 5132). In January, 1956, the Board substituted a new temporary authorization for the large irregular carriers pending final decision in the *Large Irregular Air Carrier Investigation.* The new authorization permits, *inter alia,* operation of ten flights per month between any two domestic points without regard to regularity, but does not permit "combined" operations by individual carriers. The petitioners did not receive the new interim authorization inasmuch as they have been permitted to continue operating only by reason of stays of the Board's order here involved.

Generally speaking, an irregular carrier could, under the criteria for irregular operations established by the 1947 regulations, conduct from between eight to twelve flights per month between the same points. See *American Airlines* v. *Civil Aeronautics Board,* 235 F. 2d 845, 849 (C.A.D.C.); *Air Transport Associates* v. *Civil Aeronautics Board,* 199 F.2d 181 (C.A.D.C.), certiorari denied, 344 U.S. 922. Petitioners hold out two round-trip schedules each day over the routes which they operate (Cf. R. 1202).

In March 1953, the Board instituted an administrative proceeding charging that petitioners had knowingly and willfully violated Sections 401 and 408 of the Act, and certain provisions of the Board's Economic Regulations. Broadly, those sections prohibit any air carrier from engaging in air transportation except pursuant to a Board certificate of public convenience and necessity, and prohibit, except with Board approval, any combination of properties by air carriers and persons engaged in any other phase of aeronautics or any acquisition of control of any air carrier by any such person.

After full proceedings, the Board found that petitioners had knowingly and willfully violated the Act and the Board's regulations as follows: (1) all petitioners had violated Section 401(a) (*infra*, p. 21) by engaging in air transportation as a single carrier without holding a certificate of public convenience and necessity (R. 1454, 1455, 1457, 1465, 1472), and had violated Section 408(a)(1) (*infra*, p. 21) by consolidating their properties into a single carrier without Board approval (R. 1464, 1465, 1471); (2) the irregular carriers had violated Section 401(a) and pertinent Board regulations in that each carrier separately had held out and operated more flights between the same points than irregular carriers were authorized to provide, had provided regular services through combination, and had failed to comply with the Board's ticketing, contract, and reporting requirements (R. 1472); and (3) the individual petitioners, who were found to be persons engaged in a "phase of aeronautics," also had violated Section 408(a)(5)

(*infra* p. 21), by acquiring control of the irregular carriers (R. 1471). The Board further found that the various violations by the irregular carriers constituted "multiple independent bases" for revocation (R. 1465), and that, in view of the individual petitioners' past record of violations, "any attempt to achieve compliance through sanctions short of revocation would be an idle and vain gesture." (R. 1471). The Board also stated (R. 1469, 1470) that, since petitioners had "flagrantly" and willfully ignored the statutory plan of Congress that no one is to engage in air transportation "without a certificate of public convenience and necessity or other appropriate operating authority from the Board", "no sanction short of revocation would be sufficient to assure compliance with the law."

The Board found specifically that "North American Airlines" had conducted regular operations as a single integrated carrier under the management, control and beneficial ownership of the four individual petitioners through an intricate internal maze of intercompany relationships which were utilized in an effort to make it appear that each irregular carrier was conducting separate and independent operations (R. 1453, 1454). The *modus operandi* consisted of advertising and ticketing the services in the name of North American, providing service in aircraft marked and scheduled as North American but actually owned by three partnerships and "leased" to the particular carrier which happened to be making the flight.[4] This

[4] Petitioners Weiss and Fischgrund are the former operators of Standard Air Lines, a carrier whose Letter of Regis-

operating method, the Board found, was an attempt to prevent any individual irregular carrier from being charged with operating regularly between the same points. It was conceded before the Board that the traveling public looks upon "North American Aircoach System" as the carrier from which it purchases and obtains transportation (R. 507, 509), and the Board's examiner found, after an exhaustive review of the evidence, that petitioners' activities "are purposely designed to impress the general public that

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tration was revoked in 1949 for conducting unauthorized regular transcontinental operations, *Standard A. L. Noncertificated Operations*, 10 C.A.B. 486. Petitioners Lewin and Hart are the former operators of Viking Airliners, whose letter similarly was revoked in 1950. *Viking Airliners et al, Noncertificated Operations*, 11 C.A.B. 401. Thereafter, these four individuals embarked upon their present method of operations. They acquired ownership of the irregular carriers North American, Trans National, and Trans American, and set up "dummy officers" in an attempt to conceal their ownership. They leased or rented the Letter of Registration of Hemisphere from its owner, Adelman. They established various companies to engage in "service" activities for the air carriers. The ticket agency owned by them (North American Air Coach System) advertises the service and issues tickets therefor; the partnership Republic Air Coach System performs reservations control, accounting, and fiscal duties for the operation; the aircraft are owned by the partnerships Twentieth Century Aircraft Co., California Aircraft Co., and Standard Airmotive Co., and are "leased" to the irregular carriers. The irregular carrier North American is ostensibly the "operating carrier"; the other carriers have entered into contracts whereby North American furnishes flight personnel for them. The four individual petitioners actively manage the entire operation, which is run just as any other single airline except for the internal contractual and bookkeeping arrangements. See R. 1278-1310.

'North American Airlines' is a single entity conducting regularly and scheduled air transportation service" (R. 1311).[5]

Petitioners' primary defense in the Board proceedings was that their operating methods were permitted by the 1947 exemption regulation pursuant to which their letters of regulations had been issued; and that a 1949 amendment of that regulation which imposed additional limitations upon holders of letters of registration was unlawful because it had been adopted by rule-making, rather than by adjudicatory, procedures. The Board found it unnecessary to consider most of petitioners' challenges to the 1949 regulations, however, since the majority of violations found were of the underlying statute or the 1947 regulations.[6]

The court of appeals unanimously affirmed the Board's order. The court held that the record fully

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[5] The examiner's findings were generally adopted by the Board (R. 1452).

[6] Thus, the Board found that petitioners' operation as a single air carrier violated Section 401(a) of the Act (R. 1454-1455); that the individual petitioners' acquisition of control of the carriers and the consolidation of the various enterprises into a single entity violated Section 408 (R. 1325, 1458); and that each irregular carrier had violated the 1947 regulation through excessive individual operations (R. 1454).

Insofar as the 1949 regulations were pertinent, the Board upheld their validity (R. 1459-1461). Prior to the formation of the North American Combine, their validity had been upheld by the district court in a case in which petitioner Trans-American was a party. *Arrow Airways, et al.* v. *Civil Aeronautics Board*, D.D.C., No. 4502-50, December 4, 1950, not reported.

supported the Board's findings that the "North American Combine" had operated as a "single integrated carrier" which provided "regular air transportation" without a certificate of public convenience and necessity, in violation of Section 401(a) of the Act, and that this violation alone was sufficient to sustain the order. The court further held that the individual petitioners "clearly [were] persons engaged in various phases of aeronautics"; that the Board had correctly concluded that "participation in the venture by the non-carrier petitioners constitutes the sort of consolidation to operate separate properties that Section 408(a)(1) proscribes"; and that "the acquisition of control of the carriers by the individual petitioners was properly determined to be a violation of Section 408(a)(5) of the Act" (Pet. 10A). The court stated that it had "no doubt whatever" that the violations were knowing and willful (Pet. 6A).

Having upheld the Board's findings of statutory violation, the court found it unnecessary to consider the validity of the 1949 regulations[7], since "it was clear" that the Board viewed the record as showing " 'multiple indepesdent' violations, any one of which

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[7] The court accordingly deemed irrelevant petitioners' "further charge that they were unlawfully denied access to and use of documents, evidence and testimony in the Board's possession, and relevant to show that the Board's 1949 Regulations were arbitrarily designed to cut off essential route operations" (Pet. 14A). The court went on to state, however, that "[u]nder the circumstances present here, the Board's denial of access to such material reflects no error" (*ibid.*).

justified revocation of the petitioner carriers' Letters of Registration" (Pet. 10A).

The court also held that the Board had not exceeded its statutory authority by revoking the carriers' letters of registration instead of imposing a lesser sanction.

Finally, the court upheld the Board's action in denying as untimely a motion to disqualify Member Denny (R. 1504), filed on the day the Board issued its decision and based on matters which had been known to petitioners for many months.

ARGUMENT

1. The court of appeals upheld the Board's finding that petitioners had violated Section 401(a) of the Civil Aeronautics Act by combining a number of separate air carriers and related aviation enterprises into a single operating entity which, under the name of "North American Airlines," provided regularly scheduled air transportation without holding a certificate of public convenience and necessity. Petitioners do not directly challenge the correctness of that holding; nor do they deny, as the court below expressly held, that such a serious statutory violation justified revocation of the individual carriers' operating authority. Rather, they argue that the Board erred because it revoked the letters of registration "without reference to the statutory standard of public interest by which the Board's exercise of administrative discretion is governed" (Pet. 13); and that the court of appeals erred because it similarly failed to consider that standard, and also because it did not

pass upon the validity of certain Board regulations which petitioners were found to have violated.

The argument that the Board failed to consider the "public interest" issue rests upon the erroneous assumption that the Board "determined to revoke the Letters of Registration without weighing the consequences or considering alternative courses of action" for "bring[ing] about a state of compliance" (Pet. 19). Its opinion makes it clear, however, that the Board fully considered such an alternative, but concluded that, because of the individual petitioners' record of prior violations, any sanction "short of revocation would be an idle and vain gesture" and "would be [in]sufficient to assure compliance with the law" (R. 1469, 1470, 1471). The Board carefully weighed and rejected the views of dissenting Member Adams who, while agreeing with the majority's findings of willful violations (R. 1473), argued that some lesser sanction would suffice. Similarly, the court of appeals noted (Pet. 10A, note 18) that "in choosing the remedy of revocation the Board took into account its own record evidence of previous violations by various petitioners."

The Board "has wide discretion in its choice of a remedy deemed adequate to cope with the unlawful practices," and "judicial review * * * extends no further than to ascertain whether the Commission [Board] made an allowable judgment in its choice of the remedy," *i.e.*, whether it "abused its discretion in concluding that * * * [nothing short of revocation] would give adequate protection." *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U.S. 608, 611-612;

see *Federal Trade Commission* v. *National Lead Co.*, No. 63, this Term, decided February 25, 1957. Petitioners themselves concede (Pet. 19) that it would not "be in the public interest to tolerate continuing conditions of violation of the Act and the Board's valid regulations." In the light of the record of prior violations by various of the petitioners, we submit that the court below correctly held that the Board had not abused its discretion by selecting revocation instead of a lesser sanction.[8] Cf. *Federal Communications Commission* v. *WOKO*, 329 U.S. 223, where this Court, in upholding the action of the Federal Communications Commission in refusing to renew a radio station license because the licensee previously had made false statements to the Commission with respect to the ownership of its stock, rejected the contention that, in order to justify refusal to renew, "the Commission should have made findings with respect to the quality of the station's service

[8] Nor did the Board abuse its discretion in refusing to consider the issue, which petitioners here raise (Pet. 15-16), as to whether, in some other proceeding, North American should, despite its record of statutory violations, receive a certificate of public convenience and necessity. That issue was fully considered in other Board proceedings in which petitioners' applications for certification were denied, and two of those denials have been affirmed by the court below on the ground that the Board properly had determined that public convenience and necessity did not require petitioners' certification. *North American Airlines* v. *Civil Aeronautics Board*, 237 F. 2d 209; *North American Airlines* v. *Civil Aeronautics Board*, No. 13,053, decided January 17, 1957, not yet reported. Petitions to review two other Board orders denying petitioners' applications for certification are pending in that court. *North American Airlines* v. *Civil Aeronautics Board*, No. 13,132; *Trans American Airlines* v. *Civil Aeronautics Board*, No. 13,620.

in the past and its equipment for good service in the future." (p. 228). The Court held (p. 229) that, although the Commission might have concluded that the station had established "such a standard of public service that * * * its deception was not a matter that affected its qualifications to serve the public * * * it is the Commission, not the courts, which must be satisfied that the public interest will be served by renewing the license," and it could not "say that refusal to renew the license is arbitrary and capricious under such circumstances."

The Board held that "any one of the four categories of violations" found, including the Section 401(a) violation, "justify the sanction of revocation" (R. 1466), and the court below noted that the Board considered the various violations found as "multiple independent" grounds for revocation. The court further held that, "quite apart from other grounds," the Section 401(a) violation constituted an adequate ground to support the order (Pet. 8A). Under these circumstances, we submit that the court below did not err in refusing to pass upon petitioners' attacks on the 1949 regulations. There is nothing in the record to support petitioners' contention (Pet. 20-22) that, if the court below had considered and invalidated the 1949 regulations, the Board upon remand might have imposed a lesser sanction. In short, the court's affirmance of the Board's finding that petitioners had violated Section 401(a) constitutes a fully adequate basis for upholding the Board's order.

Petitioners further err in their argument (Pet. 26-28) that the court below found a violation of Section 401 only because it also found that the com-

bination of the individual carriers violated the consolidation and control provisions of Section 408. The court sustained the Section 401 violation on the ground that the record supported the Board's factual finding that petitioners had created a "single integrated carrier" which provided regularly scheduled service without certificate authority. The fact that petitioners, in forming and operating such a carrier entity, also may have violated Section 408 is beside the point, for the alleged legality of petitioners' conduct under the latter section cannot justify their violations of the former. This is merely the familiar situation where the same conduct happens to violate more than one statutory prohibition. In any event, the point is immaterial since, as we show *infra*, pp. 16-18, the court correctly upheld the Board's findings that petitioners had also violated Section 408.

The question whether the "North American Combine" is an air carrier is one of fact, and the answer depends upon what the combine actually has done, not upon its operational organization. See Sections 1(2), 1(13), 1(27), *infra*, pp. 20-21; see, also, *e.g.*, *United States* v. *California*, 297 U.S. 175; *Thomson* v. *United States*, 321 U.S. 19.[9] The Board's findings, which the court of appeals upheld as supported by

[9] Partnerships and associations of corporations or individuals commonly have been treated as a carrier when in fact they operate as such. *E.g.*, *Interstate Commerce Commission* v. *Pickard*, 42 F. Supp. 351 (W.D.N.Y.); *Pennsylvania Public Utility Commission* v. *Israel*, 356 Pa. 400, 52 A. 2d 317; *State* v. *Rosenstein*, 217 Iowa 985, 252 N.W. 251; *Lowe* v. *Public Service Commission*, 116 Utah 376, 210 P. 2d 558.

substantial evidence, show that the individual air carriers have not been conducting separate operations through representation by a common ticket agent, but have been combined into a single operating entity which was "purposely designed to impress the general public that 'North American Airlines' is a single entity conducting regularly and scheduled air transportation service" (R. 1311). Since "North American Airlines" does not hold a certificate of public convenience and necessity, its operations have been in violation of Section 401(a). The correctness of that conclusion, which turns primarily upon factual issues which both the Board and the court of appeals resolved against petitioners, presents no question justifying further review by this Court.

2. The Board further found, and the court of appeals upheld the finding, that all petitioners had violated Section 408(a)(1) by combining their properties into a single carrier, and that the individual petitioners had violated Section 408(a)(5) by acquiring control of the carriers. Those provisions make it unlawful, without Board approval, (a) for any air carrier and any "person engaged in any other phase of aeronautics, to consolidate or merge their properties * * * into one person for the ownership, management, or operation" of such properties or (b) for any person engaged in any other phase of aeronautics "to acquire control of any air carrier in any manner whatsoever." Petitioners attack the decision of the court of appeals on the grounds that the consolidation provisions of Section 408(a)(1) apply only if there is a "change in ownership of * * * the properties involved" (Pet. 25), and that the individual

petitioners are not persons engaged in a "phase of aeronautics" (Pet. 22-24).

Initially, we note that the court of appeals correctly ruled (Pet. 8A-9A, 12A) that, since the Section 401 violations fully support the Board's order in its entirety, the Section 408 violations constitute only an alternative basis for the cease-and-desist portions of the order which run against the individual petitioners. In any event, we submit that the court below correctly upheld the Board's findings of violation of Section 408.

Section 408(a)(1) applies to any consolidation or merger of properties into one "person." The term "person" includes a partnership, firm or association (Section 1(27), *infra*, p. 20). Congress plainly dealt with the subject of combination in the broad sense of "joining," "uniting" or "informally combining" into a single operating entity, and not merely in the technical sense of a formal corporate consolidation. Cf. *East St. Louis Ry. Connecting Co.* v. *Jarvis*, 92 Fed. 735, 743 (C.A. 7); *State* v. *Atchison & N.R. Co.*, 24 Neb. 143, 38 N.W. 43, 51. *N.Y. Central Securities Co.* v. *United States*, 287 U.S. 12, upon which petitioners rely (Pet. 25), is not in point, since the provisions of the Interstate Commerce Act there involved dealt with consolidations or mergers of railway properties "into one *corporation* for the ownership, management *and* operation" of such properties (emphasis added), a different standard than that contained in Section 408(a)(1). The restricted construction which petitioners urge has no support in either the language or the legislative history, and would unduly limit the scope of an important regulatory provision.

The court below also correctly held that the individual petitioners are engaged in a "phase of aeronautics." The obvious purpose of that phrase, as the Board consistently has held, is to subject to Board control the relationships between air carriers and those other persons whose activities are directly related to flying or to air carrier services.[10] The activities of the individual petitioners in selling tickets, promoting the carriers, and leasing aircraft, are all integral to the conduct of air transportation, and petitioners therefore are engaged in a "phase of aeronautics." While petitioners refer to certain legislative history in an effort to show that Congress intended to regulate only ties with aircraft manufacturers (Pet. 23-24), the very sources they cite reflect a purpose to cover, among others, dealers in aircraft or accessories, holding companies and persons owning ground facilities.[11]

3. Finally, petitioners challenge the court's ruling that the Board did not err in denying as untimely their motion to disqualify Member Denny (Pet. 33-35). The ground for the motion was that he allegedly had made certain statements which reflected adversely

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[10] See, *e.g.*, *Pan Am. Airways, Inc. et al. Merger*, 2 C.A.B. 503; *Interlocking Relationships-W. A. Patterson et al.*, 3 C.A.B. 711; *Transcontinental & W. A., Control by Hughes Tool*, 6 C.A.B. 153; *Air Freight Forwarder Case*, 9 C.A.B. 473; C.A.B. Orders E-7500, June 19, 1953, E-8410, June 4, 1954; E-9254, May 27, 1955; E-9359, July 1, 1955. Compare Section 408(c).

[11] Section 7 of the Air Mail Act of 1934 (Pet. 20A-21A) on its face discloses that more was covered by the phrase "any phase of the aviation industry" than manufacturers or other air carriers.

upon petitioners. Although, as the court below pointed out (Pet. 13A), "most of the alleged facts dealt with situations said to have occurred a year or more previously * * * [t]hroughout the course of the proceedings after the purported occurrences, over a period of many months, petitioners took no step looking to the disqualification of Member Denny." On the contrary, their motion to disqualify was withheld until the morning of the issuance of the Board's decision, when the Board obviously had completed its deliberations. After careful evaluation of these circumstances, the court of appeals held that there was "no infirmity" in the Board's denial of the motion (Pet. 13A). That conclusion plainly was correct. Cf. *Delaney* v. *United States*, 263 U.S. 586; *United States* v. *Tucker Truck Lines*, 344 U.S. 33, 36-37.

CONCLUSION

The decision below is correct, there is no conflict of decision, and no substantial question warranting review by this Court is presented. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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APRIL 1957.

APPENDIX

The relevant provisions of the Civil Aeronautics Act of 1938 (52 Stat. 973), as amended (49 U.S.C. 401, *et seq.*), are:

DEFINITIONS

SEC. 1. As used in this Act, unless the context otherwise requires—

(1) "Aeronautics" means the science and art of flight.

(2) "Air carrier" means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation: *Provided*, That the Authority [Board] may by order relieve air carriers who are not directly engaged in the operation of aircraft in air transportation from the provisions of this Act to the extent and for such periods as may be in the public interest.

* * * * *

(13) "Citizen of the United States" means (a) an individual who is a citizen of the United States or of one of its possessions, or (b) a partnership of which each member is such an individual, or (c) a corporation or association created or organized under the laws of the United States or of any State, Territory, or possession of the United States, of which the president and two-thirds or more of the board of directors and other managing officers thereof are such individuals and in which at least 75 per centum of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

* * * * *

(27) "Person" means any individual, firm, copartnership, corporation, company, association,

joint-stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

* * * * *

TITLE IV—AIR CARRIER ECONOMIC REGULATION

Certificate of Public Convenience and Necessity

Certificate Required

SEC. 401. (a) No air carrier shall engage in any air transportation unless there is in force a certificate issued by the Authority [Board] authorizing such air carrier to engage in such transportation: * * *.

* * * * *

CONSOLIDATION, MERGER, AND ACQUISITION OF CONTROL

Acts Prohibited

SEC. 408. (a) It shall be unlawful unless approved by order of the Authority [Board] as provided in this section—

(1) For two or more air carriers, or for any air carrier and any other common carrier or any person engaged in any other phase of aeronautics, to consolidate or merge their properties, or any part thereof, into one person for the ownership, management, or operation of the properties theretofore in separate ownerships;

* * * * *

(5) For any air carrier or person controlling an air carrier, any other common carrier, or any person engaged in any other phase of aeronautics, to acquire control of any air carrier in any manner whatsoever;

* * * * *

FORM OF CONTROL

SEC. 413. For the purposes of this title, whenever reference is made to control, it is immaterial whether such control is direct or indirect.

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